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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,089

06/29/2005

Shuhe Kurata

P1347US

2298

1218

7590

11/24/2009

CASELLA & HESPOS
274 MADISON AVENUE
NEW YORK, NY 10016

EXAMINER

QUINN, RICHAE LEE

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

11/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/541,089	Applicant(s) KURATA, SHUHEI	
	Examiner RICHALE L. QUINN	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 11 - 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 11-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/29/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/30/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/23/2009 has been entered.

Claims 1 and 6 were amended. Claims 7 – 10 were cancelled. Claim 22 was added. Currently, claims 1 – 6 and 11 – 22 are pending.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Applicant recites "widthwise sides" of the crotch portion. The specification is silent with regard to which element the applicant is referring to as "widthwise sides". Appropriate correction required.

Claim Rejections - 35 USC § 112

3. Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant claims that the widthwise middle portion of the crotch portion is closer to the waist edges than the widthwise sides of the crotch portion.

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It is unclear how the middle portion of the claimed device is capable of being closer to the waist edges than the widthwise sides of the crotch.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1- 6 and 11 - 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kielpikowski et al. (US 4,842,596). The device of Kielpikowski et al. discloses a wearing article, comprising a main body including a front part (28), a back part (30), and a crotch part (16) coupling the front and back parts (Figure 1). The main body comprises a pair of waist edges (13, 14) and a pair of leg edges (18) opposed to each other. Shirring (Column 9, line 25) is formed in a substantially widthwise middle portion of the crotch part of the main body as to shorten the space between the front and back parts (at 94) by the shrinking force of an elastic member. The space between the front and back parts (16) is shorter at the width wise middle portion of the crotch (16; Figure 4) than at both width wise sides (See Figure 4) of the crotch part. Figure 4 shows that the crotch portion extends at the outer portions such that the sides are wider than the middle portion. Both the width wise sides of the crotch part form part of the leg portions (See Figure 3) below a forking of the crotch part upon wearing the article (Figure 1). The device is silent to the ratio between the length of the crotch portion and

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the length of the main body between the waist edges; however, it can be clearly shown in the drawings that the length between the waist edges is 2 to 15 times greater in length than the middle portion of the crotch (94). The device of Kielpikowski et al. is a trunk bottom and the ratio between the crotch and the waist edges allows for the desired shape of a trunk article to form with the body. The shirring is made from folds (Column 9, line 25) in the substantially widthwise middle portion of the crotch part (94) of the main body to shorten the substantially widthwise middle portion in a direction coupling the front and back part and by retaining the wavy shape (Figure 2) of the substantially widthwise middle portion. The shirring is formed by the shrinking force of an elastic member (6) for crotch attached to the substantially widthwise middle portion of the crotch part (at 94) of the main body under a stretched state (Column 24 – 25) in a direction coupling the front and back parts. Elastic members (102) for legs are attached along the leg edges under a stretched state (Column 10, lines 30 – 33). An absorbent (38) is attached to the main body. A gore is formed at the crotch part by the shirring (see folds near reference character 94) when the article is worn. The gore formed by the shirring is defined substantially at the widthwise middle portion of the crotch part and extends up towards the wearer (See Figure 2). The elastic member (102) has a widthwise dimension less than the widthwise dimensions of the crotch part as measured between the respective leg edges (see area between reference characters 96, 96). With regard to claim 22 and the limitation “distance between the widthwise middle portion (76) of the crotch part”, the crotch part is interpreted to be any portion in contact with the

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crotch (16), and is less than the distance between the widthwise sides (102) of the crotch part and the waist edges (13, 14; Figure 3).

Response to Arguments

6. Applicant's arguments filed 9/23/2009 have been fully considered but they are not persuasive.

7. Applicant submits that there is no leg portion below the forking of the crotch part. The device of Kielpikowski et al. discloses leg portions (Figure 3) that are integral with the crotch part and extend up to a portion near the waist. The device of Kielpikowski is interpreted to meet the recitation having widthwise sides of the crotch part form a part of the leg portion below the forking of the crotch part upon wearing the article. The forking of the crotch part is interpreted to be the areas at which the respective front and rear crotch portions transition to the respective front and back panels.

8. Applicant submits that the article of Kielpikowski et al. cannot have the shape of trunks or bloomers. Applicant has not recited these terms in the claims and therefore there is no structural language in the claims defining "trunks or bloomers".

9. Applicant states that the language "the space between the front and back parts is shorter at the widthwise middle portion of the crotch than at both widthwise sides of the crotch part." Applicant's specification is unclear as to which elements make up the widthwise sides of the crotch part. The device of Kielpikowski et al discloses a width wise center portion of the crotch part located between the front and back parts that has a shorter distance across than the distance across at both terminal side ends. The

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device of Kielpikowski et al. meets the limitations recited by applicant when interpreted in the broadest reasonable sense.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RICHALE L. QUINN whose telephone number is (571)272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L Quinn
Examiner
Art Unit 3765

/R. L. Q./
Examiner, Art Unit 3765

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/KATHERINE MORAN/

Primary Examiner, Art Unit 3765